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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,002	11/07/2001	Jozef Herman Peter Bastiaens	08CN07467-1	5002
23413	7590	12/23/2004	EXAMINER	
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			LEE, RIP A	
			ART UNIT	PAPER NUMBER
			1713	
DATE MAILED: 12/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/683,002

Applicant(s)

BASTIAENS ET AL.

Examiner

Rip A. Lee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-13,16-21 and 23-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-13, 16-21, and 23-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This office action follows a response filed on October 5, 2004. Claims 1, 2, 5-13, 16-21, and 23-33 remain pending.

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 21, 25, 26, and 31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. As indicated in the previous office action, the claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims have been amended to exclude akylene-alkyl(meth)acrylate copolymer and ethylene-alpha-olefin copolymer constitutes new matter because such a limitation was does not appear in the specification as originally filed. In fact, page 13 of the specification, paragraph [0039] allows for use of polymerization products of monomers such as ethylene, propylene, 1-butene, and 4-mehtyl-1-pentene and alkyl (meth)acrylates as impact modifier. It becomes clear that the written description would not have reasonably conveyed to the skilled artisan that compositions of the instant invention are necessarily devoid of these impact modifiers. That is, it is not obvious to one of ordinary skill in the art that the present inventors had possession of the concept of excluding impact modifiers described generally in paragraph [0039].

***Claim Rejections - 35 USC § 102 / 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 2, 6, 7, 10, 16, 17, 19, 20, 21, 23, and 26-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,221,283 to Dharmarajan *et al.* in view of U.S. Patent No. 4,011,200 to Yonemitsu *et al.* for the same reasons set forth in the previous office action.
5. Claims 5, 11-13, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dharmarajan *et al.* in view of Yonemitsu *et al.*, and further in view of U.S. 2001/0031831 to Miyoshi *et al.* for the same reasons set forth previously.
6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dharmarajan *et al.* in view of Yonemitsu *et al.* and further in view of U.S. Patent No. 6,528,572 to Patel *et al.* for the same reasons set forth in the previous office action.
7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dharmarajan *et al.* in view of Yonemitsu *et al.* and further in view of U.S. Patent No. 6, 277,907 to Gelbin for the same reasons set forth previously.

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8. Claims 1, 2, 5-7, 10-13, 16, 17, 19-21, and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2001/0031831 to Miyoshi *et al.* in view of U.S. Patent No. 4,011,200 to Yonemitsu *et al.* for the same reasons set forth in the previous office action.

9. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi *et al.* in view of Yonemitsu *et al.* and further in view of U.S. Patent No. 6,528,572 to Patel *et al.* for the same reasons set forth previously.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable Miyoshi *et al.* in view of Yonemitsu *et al.* and further in view of U.S. Patent No. 6, 277,907 to Gelbin for the same reasons set forth previously.

11. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyoshi *et al.* in view of Yonemitsu *et al.* and further in view of U.S. Patent No. 6,221,283 to Dharmarajan *et al.* for the same reasons set forth previously.

12. Claims 1, 2, 6, 7, 10, 16, 17, 19, 21, 26, 27, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 924 261 to Koevoets *et al.* in view of Yonemitsu *et al.* for the same reasons set forth previously.

***Response to Arguments***

13. Applicants traverse the rejection of claims under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement. Applicant's arguments have been considered fully, but they are not persuasive. As indicated, "whether the requirement for an adequate written description has been met is a question of fact, and hence, driven by the exigencies of each case." In this connection, it appears that the ruling of *Ex parte Parks* hardly applies here. The record has set forth facts which show that the instant specification does not intentionally exclude use of impact modifiers described generally in paragraph [0039]. Applicants have neither acknowledged nor addressed this notion, and supporting facts that would refute the examiner's conclusion have not been furnished by Applicants.

It is not clear how one of ordinary skill in the art would have arrived at the notion that the present inventors had possession of the concept that copolymers prepared specifically by single site catalysts, as opposed to, say, a Ziegler catalyst or a chromium/SiO<sub>2</sub> catalyst, that is at least partially modified with an  $\alpha,\beta$ -unsaturated dicarboxylic acid/derivative are not part of the invention. If the skilled artisan is able to glean this limitation conceptually from the specification, then it remains unclear which passage would evince such knowledge. In this case, the specification's silence with respect to the exclusory items would not have disclosed to one of ordinary skill in the art that the present invention is necessarily devoid of such items.

In view of this and previous discussions, the rejection under 35 U.S.C. 112, first paragraph has not been withdrawn, and consequently, claim rejections using U.S. 2001/0031831 to Miyoshi *et al.* remain in force.

Applicant have also indicated that U.S. Patent No. 6,221,283 to Dharmarajan *et al.* can not be used as a reference under 35 U.S.C. 103(c). The present invention was filed on November 7, 2001. The patent to Dharmarajan *et al.*, filed November 16, 1999, was published on April 24, 2001. The reference qualifies as prior art under 35 U.S.C 102(a), and it is a viable reference under 35 U.S.C. 103(a). As such, claim rejections using Dharmarajan *et al.* have not been withdrawn.

#### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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December 21, 2004

  
DAVID W. WU  
SUPERVISORY PATENT EXAMINER  
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